

# BRIEFING NOTE

## MANDATORY 10% BIODIVERSITY NET GAIN FOR DEVELOPMENTS

It will shortly be a statutory requirement for developments to provide a 10% net gain in biodiversity. This note summarises some of the main points to be borne in mind.

### What is Biodiversity Net Gain (BNG)?

The objective is to 'leave the natural environment in a measurably better state than it was beforehand'; specifically this means the betterment of habitats contained within an application site.

### What is the requirement for developments?

There is already a requirement in national (and some local) policy for biodiversity net gain; however the new legislation introduces a mandatory and non-negotiable requirement to provide a minimum of 10% gain, calculated using the Biodiversity Metric and involving approval of a Biodiversity Gain Plan.

It is measured against the pre-development biodiversity value of the site - the 'baseline'.

### When does it come into force?

It will apply to planning applications **submitted after 12<sup>th</sup> February 2024** for major development (e.g. 10+ homes or 1,000sqm+ non-residential space), and **2<sup>nd</sup> April 2024** for most minor development. It only applies to England.

### What is the habitats baseline date?

If a habitat has been purposefully degraded since 30<sup>th</sup> January 2020, the local planning authority can insist that the baseline is taken as the pre-clearance biodiversity value.

### How can 10% BNG be achieved?

There are 3 ways 10% BNG can be achieved:

1. On-site: Through enhancing and restoring biodiversity within the red line boundary (not land within the blue line boundary, which is considered to be 'off-site').
2. Off-site: If a developer can't achieve on-site BNG, or can only partly achieve it, they can enhance/restore habitats on other land (off-site). This can be land they own, or they can buy off-site biodiversity units on the market from 'Land Banks'.
3. Biodiversity Credits: As a last resort they must buy statutory biodiversity credits from the Government (which will use the revenue to invest in habitat creation).

'Significant' on-site habitat and all off-site habitat must have its management and maintenance secured for at least 30 years.

## How will it be secured?

A 'general condition' will be applied to every planning permission requiring that a Biodiversity Gain Plan (BGP) be submitted and approved before commencement. The BGP cannot be submitted prior to the grant of permission, though a draft can be supplied for discussion.

'Significant' on-site gains, and all off-site gains, will be controlled by Section 106 agreements, or conservation covenants. A conservation covenant is a private voluntary legal agreement, made in writing, between a Responsible Body and a landowner which establishes that land will be used for a conservation purpose.

## What is a Biodiversity Gain Plan (BGP)?

The BGP must contain a number of matters to enable the planning authority to determine whether the biodiversity gain objective has been met. There is a standard template.

## What type of development is exempt from the 10% BNG requirement?

There are a number of exemptions, including:

Section 73 and 96a applications - Section 73, where the original planning permission was exempt because it was submitted before 10% BNG became mandatory. Retrospective applications where development was carried out before the date of the application (section 73a). Amendments to a planning permission which are considered to be 'non-material' (section 96a).

Householder applications - extension/development on existing dwellinghouses.

Self-build and custom build applications - developments of no more than 9 dwellings; carried out on a site which has an area no larger than 0.5 hectares; and consists exclusively of dwellings which are self-build or custom-build.

Permitted Development - under the General Permitted Development Order (GPDO).

'De minimis' applications - where two conditions are met:

- (a) The development does not impact an onsite priority habitats<sup>1</sup>.
- (b) It impacts:
  - i. less than 25 square metres of onsite habitat that has biodiversity value greater than zero; and
  - ii. less than 5 metres in length of onsite linear habitat.

Zero Value baseline - If a site has a baseline biodiversity unit value of zero it is exempt from mandatory 10% BNG, though any planning policy requirements for net gain would still apply.

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<sup>1</sup> A range of semi-natural habitat types identified as being the most threatened and requiring conservation action under the UK Biodiversity Action Plan (UK BAP) [Further details](#)

**Do bird/bat boxes, green walls and green roofs contribute to BNG?**

The Biodiversity Metric is a habitat-based approach, using habitat as a proxy for biodiversity. Species-based features such as bird and bat boxes are not therefore included. Green walls and green/brown roofs usually only count towards BNG where they are specifically designed to be biodiverse, with a range of suitable habitats.

**How far away can off-site provision be?**

Technically off-site can be anywhere in England, however the BNG Metric contains a 'spatial risk multiplier' for off-site mitigation, which reflects the distance of habitat changes from the development site. The further away the offset is from the site, the more that multiplier figure comes down. Off-site mitigation within the same LPA/NCA as the site has a multiplier of 1 (i.e. no change), within a neighbouring LPA or NCA the multiplier is 0.75, and outside of this the multiplier is 0.5. Therefore the further from the site the off-site mitigation is, the more Biodiversity Units (BUs) need to be purchased to offset as a result.

**The information above is a summary. You should not rely upon it without taking appropriate professional advice.**

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